

# Settemeyer Deposition Transcript Excerpts

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

UNITED STATES OF §  
AMERICA, §  
§ CIVIL ACTION NO.  
PLAINTIFF, § 1:23-CV-00853-DAE  
§  
V. §  
§  
GREG ABBOTT, IN HIS §  
CAPACITY AS GOVERNOR OF §  
THE STATE OF TEXAS, AND §  
THE STATE OF TEXAS, §  
§  
DEFENDANTS. §

ORAL DEPOSITION OF  
HERMAN ROBERT SETTEMEYER  
JULY 10, 2024

ORAL DEPOSITION OF HERMAN ROBERT SETTEMEYER,  
produced as a witness at the instance of the  
Plaintiff and duly sworn, was taken in the above  
styled and numbered cause on Wednesday, July 10,  
2024, from 9:07 a.m. to 11:47 a.m., before TAMARA  
CHAPMAN, CSR, RPR-CRR in and for the State of Texas,  
reported by computerized stenotype machine, at the  
U.S. Attorney's Office for the Western District of  
Texas, 903 San Jacinto Boulevard, Austin, Texas,  
pursuant to the Federal Rules of Civil Procedure and  
any provisions stated on the record herein.

Job No. CS 6783965

1 relating to the releases of water through the dams,  
2 how those releases are made.

3 Q. Are there specific portions of Exhibit 1,  
4 your expert report, that address issues particular  
5 to hydraulics and engineering?

6 A. I don't think so.

7 Q. As an engineer, do you use modeling?

8 A. I am not a modeler. You know, when I was  
9 working at the agency, you know, the agency used  
10 models. We used models. I say "we." Through  
11 the -- excuse me -- in particular the Rio Grande  
12 Compact there was models used by the various  
13 agencies to assist in the compact deliveries. I  
14 mean, I think the Corps originated a model and it  
15 was used -- that Corps model was used to calculate  
16 the deliveries between New Mexico, Colorado, and  
17 Texas. Myself, I am not a modeler. I do not write  
18 models. I don't actually even run the models.

19 Q. So is the other side of that coin, that  
20 you do more technical evaluations and those sorts of  
21 analysis as an engineer?

22 MR. TEBO: Objection; form.

23 A. Well, as an engineer advisor to the Rio  
24 Grande Compact Commission we oversaw the accounting  
25 of water deliveries between the states. We oversaw

1       how those models operated, what parameters went into  
2       those models. If those parameters changed, how that  
3       would impact the various deliveries downstream.

4               And so, you know, in relation to models,  
5       you know, I know how they operate, I know what they  
6       do, I know what parameters go into the models.

7               When I was actually the section manager  
8       at the TCEQ for that period of time, that's when we  
9       implemented the development of the water development  
10      models that are used today to administer water  
11      rights within Texas.

12              So while I didn't actually do the models  
13      and write the models, we hired -- put out and  
14      prepared the specifications and hired the  
15      consultants that actually did those models back in  
16      the -- around the year 2000.

17              Q.     Did you perform any technical evaluations  
18      to form your opinions in this case?

19              A.     No. No. My opinions are really based on  
20      my education and years and years and years of  
21      experience associated with the Rio Grande. And an  
22      understanding of not only the Rio Grande Compact,  
23      but the 1906 and 1944 treaty with Mexico.

24                   MR. HARRISON: Can we take a quick  
25      break?

1 THE WITNESS: Sure.

2 (Break.)

3 Q. Earlier you said that the opinions you  
4 reached in this case were based on your education  
5 and experience. What experience are you basing --  
6 what experience were you referring to?

7 A. My experience associated with the Rio  
8 Grande through the Rio Grande Compact efforts,  
9 through my involvement with the 1906 treaty  
10 deliveries, the 1944 treaties, our experience in  
11 meeting with the International Boundary and Water  
12 Commission, both the U.S. and Mexico sections over  
13 various treaty issues. Experience with  
14 investigations that I have done associated with the  
15 Rio Grande, tours I've done of the Rio Grande basin,  
16 not only in Texas, but in New Mexico, Colorado,  
17 Mexico, as well, through my experience of  
18 administering water rights.

19 I think as Commissioner Rubinstein  
20 alluded to yesterday, I mean, I was responsible for  
21 drafting and processing the water rights for the  
22 Brownsville weir a long, long time ago, and I  
23 processed change of use applications on the Rio  
24 Grande for converting water from my irrigation use  
25 to a municipal use.

1                   So navigation is a beneficial use under  
2                   Texas Water Code and it's also listed under the  
3                   treaty?

4                   A.       Yes.

5                   Q.       My question is: Outside of that context  
6                   are you providing an expert opinion on navigation?

7                   A.       I don't think so.

8                   Q.       Are you providing an expert opinion on  
9                   interstate and foreign commerce?

10                  A.       No.

11                  Q.       Are you providing an expert opinion on  
12                  trade?

13                  A.       In what regard?

14                  Q.       So in Paragraph 8, for example, you note  
15                  that: There are no reasonable improvements that  
16                  could be made to --

17                         And then it goes on: To make this and  
18                  other Rio Grande segments navigable or suitable for  
19                  use as a highway for interstate or foreign commerce  
20                  and trade in the normal ways that commerce and trade  
21                  presently are carried on via navigation?

22                  A.       Yes, that's our opinion.

23                  Q.       Are you providing an expert opinion on --  
24                  on trade?

25                  A.       Only to the extent, I guess, that in my

1 years of experience of the Rio Grande that I have  
2 not seen the Rio Grande used as a mechanism to move  
3 products from one location to another. And I would  
4 call that -- I would classify that as trade.

5 Q. Is there any other background or  
6 experience that would qualify you to provide an  
7 expert opinion on trade?

8 A. Just my years of experience in  
9 understanding the river.

10 Q. Are you providing an expert opinion on  
11 economics?

12 A. No.

13 Q. What do you mean by -- in a couple of the  
14 paragraphs here, Paragraphs 7, 8, and 9, what do you  
15 mean by "highway for interstate or foreign commerce  
16 and trade"?

17 A. A means to move products from one  
18 location to another.

19 Q. Did you come up with that term?

20 A. Well, it was -- I don't remember whether  
21 it was me or Carlos, to be honest with you. But  
22 it's, you know, both of us agree that that's a fair  
23 statement.

24 Q. If it came from Carlos, do you know where  
25 he may have gotten the term from? Mr. Rubinstein

1 that is.

2 MR. TEBO: Objection; form.

3 A. We're talking about "highway for  
4 commerce," is that the term we're talking about?

5 Q. Yes. Highway for interstate or foreign  
6 commerce and trade.

7 A. And we're talking really about highway?

8 Q. Well, I think the whole phrase: The  
9 highway for interstate or foreign commerce and trade  
10 in the normal ways that commerce and trade are  
11 presently carried on via navigation.

12 A. Well, thank you. If -- like the  
13 intercoastal waterway and, you know, the Mississippi  
14 and -- and other streams that are used as highways  
15 of -- of commerce, ways of moving that stuff instead  
16 of on a gravel, concrete road, they're used to move  
17 it on these waterways. I mean, I'm familiar with  
18 the Intercoastal Waterway. I'm -- I haven't  
19 necessarily seen that much on the Mississippi  
20 itself, but I've seen it overassociated with the  
21 locks and dams in Louisiana and Arkansas associated  
22 I think with the Red River. You know, I've seen the  
23 lock and dams and how they operate.

24 So using the term "highway of -- for  
25 interstate commerce," it just made sense to me that



1 that's a term that would be a reasonable way to  
2 express that.

3 Q. And so I -- just so I understand, in your  
4 answer you mention the Intercoastal Waterway and the  
5 Mississippi River as two examples of what you would  
6 consider are highways of commerce?

7 A. Yes.

8 Q. And what is your experience or background  
9 in making those sorts of determinations on what  
10 constitutes a highway of commerce?

11 A. Like I mentioned earlier, you know, I've  
12 seen portions of the Intercoastal Waterway, I've  
13 seen locks and dams associated with -- with  
14 navigation aspects associated with streams in -- in  
15 Louisiana as well as Arkansas.

16 I understand that, you know, there's --  
17 the Mississippi is used to move products up and down  
18 the river from one location to another.

19 Just from my -- my personal experience  
20 and understanding of the movement of goods and  
21 products.

22 Q. Have you ever designed or constructed any  
23 navigation features or projects?

24 A. No.

25 Q. Look at Page 15 of Exhibit 1: Historical

1 visual observation of authors regarding Rio Grande  
2 navigation.

3 A. I'm sorry?

4 Q. Under the section Historical visual  
5 observations, Page 14. I'm sorry. Here you go.  
6 And based on this section is it your testimony that  
7 you have never seen commercial navigation activity  
8 on the Rio Grande?

9 A. Yes, I have not seen any commercial.

10 Q. And when you say "commercial navigation  
11 activity," are you meaning barges and freighters and  
12 vessels like that?

13 A. Vessels that would move --

14 MR. TEBO: Objection; form.

15 A. Vessels that would move products from one  
16 location to another location, commercial projects --  
17 projects.

18 Q. Would you consider the use of  
19 smaller-type vessels commercial navigation activity  
20 if they were -- if they met your definition of  
21 moving goods or people from one location to another?

22 A. If a vessel was capable of moving goods  
23 and products from one location to another, then that  
24 would be considered navigation to move those  
25 products.

1 Rio Grande. The model shows there's no additional  
2 water available for appropriation.

3 Even taking that a little bit farther, I  
4 mean, the agency -- the agency -- the legislature  
5 passed instream flow legislation to set aside water  
6 for environmental flow needs for the rivers and  
7 streams.

8 There was not an environmental flow set  
9 aside on the Rio Grande because there's no  
10 additional water available to meet those needs. And  
11 the legislation precluded going in and curtailing  
12 existing water rights to meet those instream uses.

13 I probably wandered off your question  
14 there.

15 Q. But you would agree, though, that  
16 circumstances could change such that the demands and  
17 needs, and the ability to use the water could  
18 ultimately result in the ability to use it in aid of  
19 navigation or for improvements?

20 A. Well, I have this saying. You never say  
21 never. If that meant impacting existing water  
22 rights, I would say that's pretty close to never.

23 Q. On Page 13, Paragraph 5, there's a  
24 question that you posed: How much water would be  
25 required to facilitate this project?

1           Let's say for discussion purposes it's  
2   100,000 acre-feet annually. Mr. Rubinstein  
3   testified yesterday that you both just picked out  
4   the 100,000 acre-feet annually number.

5           Do you agree with that?

6           A.    Yes.   I mean, it kind of goes back to the  
7   two scenarios we looked at. You're either going to  
8   have to dredge the Rio Grande or you're going to  
9   have to release more water. And we just kind of  
10   picked a number to kind of identify issues  
11   associated with increasing the water supply.

12          Q.    On Page 15, under "Reasons for Opinions"  
13   it says "physical barriers." You say: There's  
14   insufficient water supply in the Rio Grande upstream  
15   from Laredo, now and in the foreseeable future, to  
16   make any necessary improvements to make navigation  
17   feasible.

18                But doesn't this assume that additional  
19   water supply would be needed to make any necessary  
20   improvements to make navigation feasible?

21               MR. TEBO: Objection; form.

22           A.    Well, it would also mean that the --  
23   under the current operation of the Rio Grande today,  
24   even using the existing supplies we have, and the  
25   varying conditions of the river through the years,

1 that we don't really see any way to make  
2 improvements that'll allow for navigation in the way  
3 navigation means to us.

4 Q. At the bottom of Page 15 to the top of  
5 16, under "Treaty and Regulatory Variation No. 2,"  
6 could you explain your methodology used to form the  
7 opinion that reprioritizing the use of Rio Grande  
8 water for navigation would inflict serious hardship  
9 on cities and consumers?

10 A. Yes. As we've talked about before, the  
11 Rio Grande is fully appropriated, the Rio Grande is  
12 overappropriated. The Rio Grande is a fast --  
13 particularly the lower Rio Grande, is a very  
14 fast-growing populated area with increased demands  
15 for water supplies for municipal primarily, and as  
16 well as industrial uses.

17 Taking water from an existing  
18 higher-priority use and converting it to something  
19 else is going to have serious impacts on those -- on  
20 that region and the ability to meet its water  
21 demands in the future.

22 Q. Did you perform any analysis or  
23 calculations to reach that conclusion?

24 A. I didn't perform any calculations. I  
25 mean, the Texas water plan addresses the water needs

1 of the various regions in the State of Texas. And  
2 so I think the water plan itself provides  
3 information related to the needs of the region, not  
4 only the lower Rio Grande, but the entire Rio  
5 Grande.

6 Q. And your economic barriers and needed  
7 consents, No. 1 on Page 16, could you explain the  
8 methodology you used to form your opinion that the  
9 potential costs to improve and maintain navigation  
10 on the relevant stretch of the Rio Grande, where  
11 there is no demonstrated demand, is difficult to  
12 justify?

13 A. Okay. Repeat the first part of your  
14 question.

15 Q. What was the methodology that you used to  
16 form that opinion?

17 A. My -- my experience and understanding of  
18 the -- of the Rio Grande of the needs for the water  
19 users, the way the water is distributed to the water  
20 users. And, you know, water is actually available  
21 to the water users. If you reapportion the water to  
22 something else, you would ultimately be taking water  
23 away from the existing water users who basically  
24 today don't have the -- don't have a necessary  
25 amount of water need now to meet their demands, and

1 their demands into the future.

2 Q. And when you say "relevant stretches"  
3 that -- between Mile Marker 275.5 and 610?

4 A. Well, the statement "maintain navigation  
5 on the relevant stretch" is the segment that you  
6 talked about. If additional water is required to  
7 meet the navigation in those segments, it's going to  
8 impact all water users on the Rio Grande.

9 Q. Did you quantify or estimate the  
10 potential costs to improve navigation?

11 A. No.

12 Q. Did you quantify or estimate the  
13 potential costs to maintain navigation?

14 A. No.

15 Q. On Page 21 of Exhibit 1, at the bottom it  
16 says -- the last paragraph says: We disagree with  
17 the United States' contention that it can  
18 unilaterally decide the subject portion of the Rio  
19 Grande is commercially navigable and take water from  
20 existing water rights holders for the United States'  
21 navigation desire, even when no such activity or  
22 demands exists.

23 Did I read that correctly?

24 A. Yes.

25 Q. And what is the basis for that statement?

1           A.       Well, basically -- basically it's kind of  
2           generally taken from the pleadings that I was able  
3           to read that -- you know, that U.S.'s contention  
4           about navigability on the Rio Grande and -- and  
5           the -- their ideas of making the Rio Grande  
6           navigable.

7                       MR. HARRISON:   Can I take five  
8           minutes?

9                       MR. TEBO:    Sure.

10                      (Break.)

11           Q.       Mr. Settemeyer, are the basis for all of  
12           your opinions -- any of your opinions different than  
13           Mr. Rubinstein's?

14           A.       I don't think so.

15                      MR. HARRISON:   I'll pass the witness.

16                      EXAMINATION

17           BY MR. TEBO:

18           Q.       Mr. Settemeyer, did you testify today  
19           about the relevance of water availability to the  
20           feasibility of improvements to the Rio Grande River?

21           A.       Yes.

22           Q.       And did you testify that the waters of  
23           the Rio Grande River are fully appropriated?

24           A.       Fully appropriated and overappropriated.

25           Q.       Does your report state that the waters



1 are overappropriated to the best of your  
2 recollection?

3 A. I don't know if the report states that  
4 it's overappropriated. I know it states that it's  
5 fully appropriated.

6 Q. I understand.

7 Were a portion of the current -- scratch  
8 that.

9 If some of the current rights holders to  
10 waters of the Rio Grande River were to abandon their  
11 rights, thereby freeing up some of the waters, are  
12 there uses not related to navigation that would  
13 likely get priority to appropriate those waters?

14 A. Well, first of all, if water rights were  
15 freed up or canceled or abandoned that would provide  
16 additional water, that water would be used by the  
17 existing water rights because the stream is  
18 overappropriated.

19 If there was enough water somehow created  
20 within the Rio Grande, there is documented  
21 additional demands of the region that would need to  
22 be supplied for higher priority use than navigation.

23 Q. Would you clarify a little bit of your  
24 answer? Specifically what documented -- I think  
25 documented demands, did you say, are you referring

1 considered in our report was the increased releases  
2 from Amistad to increase navigation. Those  
3 increased releases could be made but they're going  
4 to impact existing water rights and as such -- first  
5 of all, TCEQ is not going to issue a water right for  
6 that purpose for those increased uses that's going  
7 to impact existing water rights, they're prohibited  
8 by statute from doing such.

9 Q. Understood.

10 Is it within the scope of IBWC's  
11 authority to unilaterally decide to make those water  
12 releases?

13 A. Not a water belonging to Texas, no.

14 Q. Were you asked today whether you had  
15 provided expert opinion on navigation?

16 A. Yes.

17 Q. Were you asked today whether you provided  
18 expert opinion on trade?

19 A. Yes.

20 Q. Were you asked today whether you had  
21 provided an expert -- any expert opinion as to  
22 foreign or interstate commerce?

23 A. I believe so.

24 Q. Were you asked today whether you provided  
25 any expert opinion as to economics?

1 A. Yes.

2 Q. Now, are you or are you not an expert  
3 with respect to the subject areas, i.e., navigation,  
4 trade, foreign or interstate commerce, economics,  
5 per se?

6 MR. HARRISON: Objection; form.

7 A. Can we go through those one at a time?

8 Q. Oh, sure. So, yeah.

9 Well, let me just ask you this: Are you  
10 capable -- are you an expert on the subject of  
11 navigation as it bears on the use of the waters of  
12 the Rio Grande River?

13 A. I would be -- I'm an expert on the  
14 release of water on the Rio Grande River from the  
15 reservoirs for navigation purposes to -- to the  
16 detriment of existing water users.

17 Q. And are you an expert on the subject of  
18 trade as it would bear on the use of the waters of  
19 the Rio Grande River?

20 A. Well, again, if trade required additional  
21 water releases from the reservoir, they would impact  
22 water users, I would be an expert in that regard,  
23 yes.

24 Q. And similarly, are you an expert on the  
25 subject matter of foreign or interstate commerce as

1 well as economics -- well, we'll do it one at a  
2 time.

3 Are you an expert on the subject matter  
4 of foreign or interstate commerce as it relates to  
5 the use of the waters of the Rio Grande River?

6 A. I would be -- I would be an expert  
7 relate -- relating similarly to the -- what we  
8 discussed before about the use of water for those  
9 purposes which would impact existing water rights.

10 Q. And are you an expert on the subject  
11 matter of economics as it would relate on the use of  
12 the waters from the Rio Grande River?

13 A. No, I don't think so.

14 Q. Could you form an opinion about economic  
15 matters to the extent that those matters had an  
16 impact on water rights and water right -- and water  
17 users on the Rio Grande River?

18 A. I could form an opinion and express an  
19 opinion that if the uses of those waters impacted  
20 existing water rights in impacted municipal users,  
21 irrigation users, industrial users, I could  
22 certainly understand it, that that would have an  
23 economic impact on those entities, yes.

24 Q. Understood.

25 MR. TEBO: I think that's it for me.

1 Thank you, Mr. Settemeyer.

2 THE WITNESS: Thank you.

3 EXAMINATION

4 BY MR. HARRISON:

5 Q. You were asked about the navigation use  
6 squatter rights just a moment ago. Does the lack of  
7 Texas water rights for navigation make a river  
8 nonnavigable?

9 A. I don't know.

10 Q. You were also asked about whether you  
11 were an expert on various subjects as those would  
12 bear as to the use of the waters of the Rio Grande  
13 River. And you said for some of those that you were  
14 an expert only as to whether there were additional  
15 water releases implicated. Is that correct?

16 A. I believe so.

17 Q. And so that would cover the expert  
18 subject matter of trade?

19 A. Anything that would require  
20 excess water -- additional water releases that would  
21 impact our existing water rights.

22 Q. So the scope of your expert opinion and  
23 testimony on trade, for example, is only as it  
24 relates to whether there are additional water  
25 releases?

1 MR. TEBO: Objection; form.

2 A. I believe that's correct.

3 Q. And same question for foreign or  
4 interstate commerce, your expert opinion is only as  
5 to whether additional water releases are warranted?

6 MR. TEBO: Objection; form.

7 A. It would be whether additional water  
8 releases are made which would impact existing water  
9 rights.

10 Q. And you were also asked about forming  
11 opinions on economic matters and you said that you  
12 would -- you understood that you were providing  
13 testimony on whether there were impacts on uses  
14 based on water releases and water rights. Is that  
15 correct?

16 A. No. What I intended to say -- I don't  
17 know if I did or not. What I intended to say was  
18 that if situations arose where entities in Texas  
19 were deprived of their water supplies, whether  
20 that's a municipality, an irrigator, industrial  
21 user, et cetera, that those deprivation of supplies  
22 would have an economic impact on those entities.

23 Q. You're not providing expert opinion on  
24 what that economic impact would be, just simply that  
25 there would be an economic impact. Correct?

1           A.       That's correct.   We did not do a study to  
2       identify.   Now, it's my understanding that there are  
3       studies that have been done but we did not do a  
4       study.

5           Q.       And so you --

6                   MR. HARRISON:   That's all I have.

7                   THE STENOGRAPHER:   Same order as  
8       yesterday?

9                   MR. TEBO:   Yes, please.

10                   (Deposition concluded at 11:47 a.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25